

18 June 1970

MEMORANDUM FOR THE RECORD

SUBJECT: Department of Justice Legislative Program
in the Crime Field

Talked with Louis Mayo, Law Enforcement Assistance Administration, specifically in connection with S. 3563 and the companion bill, H.R. 16354. I suggested that Mr. Mayo might wish to consider the definitions of non-testimonial identification with a view toward inserting some broader words which would encompass the trace metals technique. He was generally familiar with the bill and agreed that this would be an excellent thing to do. He will follow up with the proper people in Justice.



JOHN S. WARNER
Deputy General Counsel

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OFFICE OF THE DEPUTY ATTORNEY GENERAL

WASHINGTON, D.C. 20530

June 10, 1970

TO: General Counsel's Committee of the
Federal Bar Association

FROM: *RK* Richard G. Kleindienst
Deputy Attorney General

SUBJECT: Department of Justice Legislative
Program in the Crime Field

When the Attorney General addressed the Committee, he undertook to forward information on our various legislative items in the crime field.

The enclosed material consists of a one-page explanation and status report on each of our significant crime items. Upon request, we will gladly furnish more detailed and specific information on any of the measures.

I hope that you will review this material and, when an appropriate opportunity presents itself, be in a position to lend us support.

We are deeply disappointed at the slow movement of the crime items through the Congress and of the opposition, in many cases due to misconceptions, that we have encountered.

Enclosures

FEDERAL IMMUNITY OF WITNESSES ACT

Substance:

This proposal would replace numerous disparate witness-immunity laws scattered throughout the United States Code with a single set of uniform provisions in Title 18. Designed especially for use against organized crime, the proposal would eliminate the existing immunity from prosecution in favor of immunity from the use of the witness' testimony against him.

Status:

This proposal was supported by the President in his statement to Congress on Organized Crime on 4/23/69. It was introduced as S. 2122 and H.R. 11157 and referred to the Judiciary Committees. AAG Wilson testified in support of S. 2122 on 6/3/69 before the Senate Subcommittee on Criminal Laws and Procedures and in support of H.R. 11157 on 8/7/69 before Subcommittee #3, House Judiciary Committee. S. 2122 was subsequently included as Title II of S. 30, the Organized Crime Control Act of 1969, which was passed by the Senate on January 23, 1970, and is pending before the House Judiciary Committee. H.R. 11157 was ordered favorably reported 5/5/70.

June 9, 1970

ORGANIZED CRIME CONTROL ACT OF 1969

Substance:

This bill (S. 30) is an omnibus bill embodying recommendations of the President's Crime Commission, the National Commission on Reform of Federal Criminal Laws, and other groups. The bill consists of 10 titles, including the Administration's general immunity (Title II) and syndicated gambling (Title VIII) proposals. Other titles establish special grand juries authorized to sit for extended terms in large cities (Title I); codify existing Federal civil contempt law designed to deal with recalcitrant witnesses in grand jury and court proceedings (Title III); create a new false declaration provision eliminating outmoded evidenciary restrictions in present perjury prosecutions (Title IV); authorize the Attorney General to protect and maintain Federal or State organized crime witnesses and their families (Title V); authorize the taking of depositions in criminal cases (Title VI); regulate litigation seeking to suppress the infiltration of legitimate organizations by racketeers or the proceeds of racketeering activities, where interstate or foreign commerce is affected (Title IX); and provide for increased sentence -- up to 30 years -- for dangerous adult special offenders -- the recidivist, the professional offender, and the organized crime leader (Title X).

Status:

S. 30 was supported in principle by the President in his statement to Congress on Organized Crime on 4/23/69, and the Department of Justice has participated with the staff of the Senate Judiciary Committee in making refinements in it.

The bill passed the Senate on January 31, 1970, and is pending before the House Judiciary Committee. Hearings commenced 5/20/70, and the Attorney General testified 5/21/70,

June 9, 1970

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WAGERING TAX AMENDMENTS

Substance:

This proposal is designed to close the gap created by Supreme Court decisions holding that some of the provisions of the wagering tax statutes offend against the Fifth Amendment's privilege against self-incrimination. It would prohibit the use against the taxpayer of information obtained through his compliance with the wagering tax laws, while at the same time it would increase the coverage and amount of the taxes, and would authorize a grant of immunity to essential witnesses.

Status:

This proposal was supported by the President in his statement to the Congress on Organized Crime of April 23, 1969. It was introduced as S. 1624 and H.R. 322. It is pending with the Senate Committee on the Judiciary and House Committee on Ways and Means. Hearings on S. 1624 were held by the Senate Subcommittee on Criminal Laws and Procedures in June 1969. It was favorably reported by the Senate Judiciary Committee 5/5/70 and referred to the Senate Finance Committee.

June 9, 1970

SHERMAN ACT AMENDMENT

Substance:

This legislation would increase the maximum fine for corporate criminal violations of the Sherman Antitrust Act (15 U.S.C. 1) from \$50,000 to \$500,000, leaving unchanged the fine for individual violations. The last change in the penalties for violations of this Act was in 1955 when the maximum fine was increased from \$5,000 to \$50,000. The present fine is believed to be too low either to provide a sufficient deterrent to large corporate offenders or to allow the courts adequate latitude in exercising their discretion in the imposition of fines.

Status:

This proposal was introduced as S. 3036 and H.R. 14116 and referred to the Subcommittee on Antitrust and Monopoly Legislation of the Senate Judiciary Committee and Subcommittee No. 5 of the House Judiciary Committee. Deputy Assistant Attorney General Comegys testified on S. 3036 on March 4, 1970. H.R. 14116 passed the House on February 16, 1970. S. 3036 approved 5/19/70 for full Senate Judiciary Committee action.

June 9, 1970

Prohibiting Prurient Advertising

Substance:

This legislation, which was recommended by the President and submitted to the Congress by the Attorney General, would prohibit the interstate distribution of advertisements which are designed and intended to appeal to a prurient interest in sex. Violators could incur penalties of up to 5 years imprisonment, or a \$50,000 fine, or both, for a first offense. Subsequent offenses could result in double those penalties.

Status:

This legislation was introduced in the House as H.R. 11032 and was the subject of hearings before Subcommittee 3 of the Judiciary Committee in September 1969. It was introduced in the Senate as S. 2074 and has been favorably reported to the Judiciary Committee by the Subcommittee on Juvenile Delinquency.

June 9, 1970

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BAIL REFORM ACT AMENDMENTS

Substance:

This proposal would authorize judges to:
(1) preventively detain, after a hearing, a person charged with certain categories of crimes whom he found would pose a danger to another person or the community if released, regardless of the conditions of release imposed; (2) consider danger to the community in setting release conditions other than money bail; (3) revoke the release of a person who violates the conditions of his release, (the person could also be charged with contempt of court for violation of conditions); (4) impose an additional prison sentence on persons convicted of committing a crime while on bail; and (5) impose a minimum sentence for bailjumping.

Status:

This proposal was introduced in the Senate as S. 2600 and in the House as H.R. 12806. S. 2600 is pending with the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary. On October 21, 1969, the Attorney General testified on H.R. 12806 before Subcommittee No. 4 of the House Committee on the Judiciary. The Subcommittee's hearings were recessed subject to call November 20, 1969. Deputy Attorney General testified before the Subcommittee on Constitutional Rights, Senate Judiciary Committee, 5/22/70.

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PROTECTION OF MINORS FROM PORNOGRAPHY

Substance:

Recommended by the President and submitted to the Congress by the Attorney General, this legislation would prohibit the use of interstate facilities, including the mails, for the distribution of matter harmful to minors, or advertisements for such matter, to anyone under the age of 18. Violators of this prohibition would be subject to up to 5 years imprisonment, a \$50,000 fine, or both, for a first offense. Subsequent offenses could result in double those penalties.

The material to which this bill applies is defined as that which depicts, describes or represents nudity, sexual conduct or sado-masochistic behavior and which is "offensive to prevailing standards in the adult community concerning what is suitable material for minors," and which is "substantially without redeeming social value for minors." Delivery of such material to a residence where a minor resides would be deemed to be for delivery to a minor unless the material is addressed to an adult and enclosed in a wrapper.

Status:

This legislation was introduced in the House as H.R. 11031 and was the subject of hearings before Subcommittee 3 of the Judiciary Committee in September 1969. It was introduced in the Senate as S. 2073 and has been favorably reported to the Judiciary Committee by the Subcommittee on Juvenile Delinquency.

June 9, 1970

AMENDMENT TO THE CRIMINAL APPEALS ACT

Substance:

Presently, the Criminal Appeals Act, 18 U.S.C 3731, provides that an appeal in a criminal case may be taken directly to the Supreme Court by the United States when a decision or judgment dismissing or setting aside an indictment or information is based upon the invalidity or construction of the statute upon which the indictment or information is founded, or when there is a decision or judgment sustaining a motion in bar when the defendant has not been put in jeopardy. An appeal may be taken to a court of appeals by the United States when there is a decision or judgment setting aside or dismissing an indictment or information, or arresting a judgment of conviction, except where a direct appeal may be taken to the Supreme Court. However, the courts have interpreted the statute as allowing appeals only on rulings pertaining to the process by which an indictment or information is returned or the validity of an indictment or information as a pleading. Also, the statute has been interpreted as not permitting the government to appeal from decisions made after jeopardy has attached, irrespective of whether the defendant has been acquitted.

This legislation would permit the government, in a criminal case, to appeal from any decision which is not a judgment of acquittal. Furthermore, the appeal would be to the Supreme Court only if the sole ground for the decision to be appealed is a determination of the invalidity of an Act of Congress, otherwise the appeal would be taken to a court of appeals.

Status:

This legislation was submitted by the Attorney General, introduced as S. 3132 and H.R. 14588, and referred to the Senate and House Judiciary Committees, respectively. Assistant Attorney General Wilson testified March 10, 1970 before the Subcommittee on Criminal Laws and Procedures, Senate Judiciary Committee. H.R. 14588 is pending with Subcommittee #5, House Judiciary Committee.

June 9, 1970

ILLEGAL GAMBLING BUSINESS CONTROL

Substance:

Title I would make it a felony for large-scale gamblers and law enforcement officers or public officials to scheme to obstruct enforcement of State and local laws against gambling through bribery of the government officials. Title II would make it a Federal offense to engage in a large-scale business of gambling. In addition, the proposal would permit interception of wire or oral communications, under existing safeguards, to provide evidence of an offense under this proposal.

Status:

The proposal was introduced as S. 2022 in the Senate and as H.R. 10683 in the House. S. 2022, with amendments, was made part of S. 30, the omnibus organized crime bill, which was passed by the Senate on January 23, 1970. It is now pending before the House Judiciary Committee, where hearings started on May 20.

June 9, 1970

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THE CONTROLLED DANGEROUS SUBSTANCES ACT

Substance:

The proposed act would substantially revise existing drug legislation, changing the constitutional basis of control over dangerous drugs from the taxing power to the commerce power. The act would establish four general schedules of dangerous drugs graduated according to accepted medical value and potential for abuse. The Attorney General would be authorized to move substances from one schedule to another, within limitations, and to schedule drugs not previously listed. The proposal also contains a new and comprehensive penalty structure which is designed to provide courts with both the guidance and the flexibility which will enable them to handle offenders on an individual basis. The proposed act would also increase the scope of the warrant and arrest authority of agents of the Bureau of Narcotics and Dangerous Drugs, and would establish firm but reasonable controls over drug dealers and manufacturers through the use of appropriate licensing and record keeping procedures.

Status:

The Attorney General submitted this proposal to Congress on July 15, 1969, the day after the President made an extensive statement to the Congress on the drug problem. The bill was introduced in the Senate as S. 2637 and was referred to the Senate Judiciary Subcommittee on Juvenile Delinquency. The Attorney General and Director, Bureau of Narcotics and Dangerous Drugs, testified before this Subcommittee on September 15, 1969. The Bureau of Narcotics and Dangerous Drugs Director testified further on October 20, 1969. After considerable staff work and some compromises, the full Senate Judiciary Committee reported a clean bill, S. 3246, on December 16, 1969. With minor floor amendments the bill passed the Senate by unanimous vote on January 28, 1970.

In the House the proposal was essentially divided into two parts and introduced as H.R. 13742 (narcotics only) and H.R. 13743 (dangerous drugs only). The bills were referred to the House Committees on Ways and Means and on Interstate and Foreign Commerce, respectively. The Subcommittee on Public Health and Welfare of the Interstate and Foreign Commerce Com. has conducted hearings and, although S. 3246 has not yet formally been referred to a Committee, it has in effect been considered by this Subcommittee during hearings. The Director, BNDD, testified before the Subcommittee on February 3 and March 3, 1970. H.R. 17463 (substantially similar to S. 3246) is also before the House Committee on Ways and Means.

June 9, 1970

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NON-TESTIMONIAL IDENTIFICATION OF SUSPECTS

Substance:

Permits judicial officer to issue order that suspects give non-testimonial evidence, such as fingerprints or blood samples, if the judicial officer finds that there is probable cause to believe a crime has been committed, that there are reasonable grounds, not amounting to probable cause to arrest, to suspect that the person named or described in the affidavit committed the crime, and that the results of specific non-testimonial identification procedures will be of material aid in determining whether the person committed the crime.

Status:

Submitted to Congress March 3, 1970. Introduced in the Senate as S. 3563 and in the House as H.R. 16354. Pending with the Senate and House Judiciary Committees. Assistant Attorney General Wilson testified before the Senate Judiciary Subcommittee on Criminal Laws and Procedures on March 10, 1970.

June 9, 1970

CRIMINAL JUSTICE ACT AMENDMENTS

Substance:

The bill would increase the scope of legal services available to defendants in Federal criminal cases who are financially unable to obtain counsel by authorizing (1) appointment of counsel for persons charged with probation violation or seeking relief by way of habeas corpus or under 28 U.S.C. 2255 (claim of right to release by attack on sentence on constitutional grounds), and for detained material witnesses; (2) establishment in districts with over 200 annual appointments of counsel for indigent defendants of a public defender or publicly financed private defender office; (3) increase of the hourly rates of compensation and the maximum fees allowable for court appointed attorneys and for persons rendering expert service.

Status:

This bill was introduced as S. 1461 in the Senate and H.R. 9856 in the House. Associate Deputy Attorney General Santarelli testified before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary June 24, 1969. S. 1461, amended, passed the Senate 4/30/70. H.R. 9856 is pending before the House Judiciary Committee, Subcommittee No. 3.

June 9, 1970

LEAA AMENDMENTS

Substance:

Amends Title I of the Omnibus Crime Control and Safe Streets Act of 1968 in several respects, including permitting LEAA to waive the requirement that a designated percentage of a grant be allocated to local governments in certain circumstances; strengthening the provisions relating to grants for educational purposes; authorizing specific grants of discretionary funds, within prescribed limitations, without matching State funds; authorizing specific grants for the construction, acquisition or improvement of State and local correctional facilities and the improvement of correctional programs and practices; and authorizing open-ended appropriations for fiscal year 1971 and beyond.

Status:

Submitted to the Congress on February 17, 1970, and introduced as S. 3541 and H.R. 15947. The Attorney General testified 3/12/70 before Subcommittee No. 5, House Judiciary Committee. House Judiciary Committee 5/26/70 ordered amendments favorably reported. Introduced 5/27/70 as a clean bill H.R. 17825, H.R. 17826 (30 of 34 members of the House Judiciary Committee joined as sponsors).

June 9, 1970

COMMUNITY TREATMENT CENTERS

Substance:

This proposal, which was supported by the President in his statement on Reform of the Federal Corrections System of November 13, 1969, would authorize the Federal courts and the U.S. Board of Parole to require, as a condition of probation or parole, an offender to reside in or participate in the program of a residential community treatment center, provided adequate facilities are available.

Status:

S. 3261 and H.R. 2175 are pending in Judiciary Committees, (Subcommittee on Criminal Laws and Procedures and Subcommittee #3, respectively).

June 9, 1970

MARIHUANA REGISTRATION AND TAX AMENDMENTS

Substance:

This proposal, which was prepared in consultation with representatives of the Treasury Department, is a direct result of the decision by the Supreme Court in the Leary case on May 19, 1969. This decision (395 U.S. 6) effectively rendered the present Marihuana Tax Act unenforcible by holding that following the requirements of the Act resulted in violation of the privilege against self-incrimination. The proposal would add to the Internal Revenue Code the prerequisite that any person seeking registration must be legally qualified under the laws of the jurisdiction in which he is operating to engage in the activity for which he is seeking registration. This would avoid any possible requirement of self-incrimination. The bill also contains further amendments to the Internal Revenue Code which provide technical and procedural support for the above change, and which would make the law more explicit with regard to possession and trafficking in marihuana. This bill was proposed as a stop gap measure pending the more desirable enactment of the Administration's proposed Controlled Dangerous Substances Act, which places marihuana control under the commerce clause of the Constitution and eliminates the disabilities resulting from the Leary decision.

Status:

The proposal was submitted to the Congress on July 15, 1969 and was subsequently introduced in the Senate as S. 2657 and in the House as H.R. 14799. While the Senate Finance Committee has taken no action on the bill, this proposal was considered in Executive Session on November 17, November 18, and December 3, 1969 by the House Ways and Means Committee. We are hopeful that speedy action by the House on S. 3246, the Controlled Dangerous Substances Act, which passed the Senate on January 28, 1970, will obviate the need for further action on this bill.

June 9, 1970

**LABOR UNIONS; PROHIBITION
AGAINST CERTAIN PERSONS HOLDING OFFICE**

Substance:

Section 504 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 504) enumerates offenses which disqualify a person from holding union office. Presently members of the Communist Party and persons convicted of robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of certain subchapters (reporting and trusteeships) of the Act, or conspiracy to commit any such crimes are prohibited from serving as an officer, director, agent, or employee (except clerical) of any labor organization or as a labor relations consultant for five years after conviction or the end of imprisonment.

This proposal would amend §504 by increasing the number of offenses included in the statute. Disqualification would be extended to cover kidnapping, perjury, forgery, any violation of the Act, unlawful payments under the Taft-Hartley Act, any violation of the Welfare and Pension Plans Disclosure Act, mail fraud, obstruction of justice which constitutes a felony, certain kickback, fraud, and racketeering provisions of Title 18 U.S.C., and attempts to commit any of these crimes. Convictions before as well as after enactment would be included.

Status:

Submitted to Congress March 11, 1970. Introduced in the Senate as S. 3583 and in the House as H.R. 16407. Pending with Senate Committee on Labor and Public Welfare (Subcommittee on Labor) and House Committee on Education and Labor (Special Subcommittee on Labor).

June 9, 1970

YOUTH CORRECTIONS ACT;
USE OF HEARING EXAMINERS

Substance:

This proposal is designed to improve the administration of the Youth Corrections Act by the U. S. Board of Parole (Youth Corrections Division) by authorizing hearing examiners, rather than members of the Board as now required, to conduct interviews of youth offenders.

Status:

Submitted to the Congress on March 9, 1970.
Introduced in the Senate as S. 3564 and in the House as H.R. 16353. S. 3564 reported favorably by the Senate Judiciary Committee 5/13/70. Chairman Reed of the Parole Board testified before Subcommittee #2, House Judiciary Committee on 5/7/70. S. 3564 passed the Senate 5/15/70.

June 9, 1970

ANTI-BOMBING LEGISLATION

Substance:

This legislation, which was recommended by the President and submitted to the Congress by the Attorney General, is designed to strengthen the Federal criminal laws concerning the illegal use, transportation and possession of explosives. It would amend 18 U.S.C. 837 in several respects, including the expansion of the definition of "explosives" to include incendiary devices, increases in the maximum penalties for transportation of explosives, and the addition of new federal crimes: malicious bombing of federal premises, unauthorized possession of explosives in federal buildings, malicious bombing of property used by persons engaged in commerce or for activities in commerce, possession of explosives knowing that they will be transported or used illegally.

Status:

Submitted to Congress 3/25/70. Introduced as S. 3650 and as H.R. 16699 and 16700. Pending with Senate Judiciary Subcommittee on Criminal Laws and Subcommittee #5, House Judiciary Committee.

June 9, 1970

D.C. OMNIBUS CRIME BILL

Substance:

This proposal includes reorganization of District court system, revision and codification of criminal procedure code, revision of juvenile procedure code, increase in funding and powers of Bail Agency, and conversion of Legal Aid Agency into full-fledged Public Defender Service.

Status:

This proposal, S. 2601, passed the House and the Senate in substantially different form and content and is presently in conference. The conference committee began its meetings on April 15, 1970.

The two versions of the bill contain different provisions concerning, among other things, the length of time provided for court reorganization, the number of judges for the trial court, their term of office and salary, jurisdiction of adult court over certain juvenile offenders, and "no-knock" entry. Among the provisions in the House-passed version which are not included in the Senate version are: mandatory sentences for certain violent or armed crimes; the Administration's bail reform bill, including pretrial detention provisions, changed to apply only to the District of Columbia; transfer of Lorton corrections facilities from the D.C. Department of Corrections to the Federal Bureau of Prisons; attorneys' fees in actions against police for wrongful arrest; and abolition of Commission on Revision of Criminal Laws. Among the provisions in the Senate-passed version which are not included in the House version are: authority for assignment of District Court judges to Superior Court; authority for judges to place persons on probation without a verdict; creation of a Department of Correctional Services in the District to consolidate correctional services in the District; extension of the Commission on the Revision of Criminal Law; requirement of narcotics testing; creation of a criminal injuries compensation board; implied consent law for determining drunk driving; availability of crime insurance in the District; and authorization of \$48 million Federal payment for the District of Columbia for fighting crime.

June 9, 1970

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